

State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
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Meeting Minutes
November 18, 2003

The State Personnel Board met in public session on Tuesday, November 18, 2003, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek South Drive, Building A, First Floor - Sabin Room, Denver, Colorado 80246.

The meeting was called to order by Chair Joyce Lottner at approximately 9:10 a.m. In addition to Ms. Lottner, Board members Diedra Garcia, Elizabeth Salkind, Linda Siderius, and John Zakhem were present.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were present.

I. REQUESTS FOR RESIDENCY WAIVERS

A. November 1, 2003 Report on Residency Waivers

There were no requests for residency waivers this month.

II. PENDING MATTERS

There were no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

A. Brandy Rogers v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003B072.

Following a discussion of the standard for the award of attorney fees, Ms. Salkind moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial

Decision. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

- B. Jeffrey Verhey v. Department of Revenue, Taxpayer Services, State Personnel Board case number 2003G129.

Mr. Zakhem moved to adopt the Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

- C. Sam Biondolillo v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2003G140.

Ms. Siderius moved to adopt the Order of Dismissal. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Kem Reliford v. Department of Transportation, State Personnel Board case number 2003G128.

Director Worthington recused herself from participation in the discussion of this case. Legal Assistant Sprague called the case number and the vote in lieu of the Director.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and grant the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia voted in opposition to the motion.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Frances Moore v. Department of Human Services, Lookout Mountain Youth Service Center, State Personnel Board case number 2003B112.

On November 13, 2003, a First Amended Initial Decision of the Administrative Law Judge was issued, which replaces the Amended Initial Decision and Initial Decision. The ALJ found that Respondent's

disciplinary termination of Complainant was arbitrary, capricious or contrary to rule or law; ordered that Respondent's action is rescinded; and ordered Respondent to reinstate Complainant with back pay and benefits to the date of termination. On October 30, 2003, the ALJ issued an Amended Initial Decision, pursuant to a Protective Order entered by the ALJ, mandating that the identities of all juveniles at Lookout Mountain remain confidential.

- B. Debra A. Betancourt and Lynda Pauley v. Department of Human Services, Colorado State Veterans Center, State Personnel Board case number 2003B222(C).

On November 6, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary reductions of Complainants' pay were not arbitrary, capricious or contrary to rule or law, and ordered that both of Respondent's disciplinary actions are affirmed.

VI. REVIEW OF THE MINUTES FROM THE OCTOBER 21, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the October 21, 2003 meeting as submitted. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained because she was not present at that meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 21, 2003 PUBLIC MEETING:

- A. Kevin Harvey v. Department of Human Services, Division of Youth Corrections, Mount View Youth Service Center, State Personnel Board case number 2002G129.

The Board voted to adopt the Dismissal Order, the findings of fact and conclusions of law in the Initial Decision and Order Denying Respondent's Request for Attorney Fees, and the Initial Decision of the Administrative Law Judge.

- B. Leona M. Olquin v. Department of Transportation, Materials and Geotechnical Branch, State Personnel Board case number 2003G100.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- C. Kevin Harvey v. Department of Human Services, Division of Youth Corrections, Mount View Youth Service Center, State Personnel Board case number 2003G111.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. Gayle Marie Ross v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2003G122.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Ennio Daniel v. Department of Public Health and Environment, State Personnel Board case number 2003G065.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- F. Carol Roberson v. Regents of the University of Colorado, University of Colorado Health Science Center, State Personnel Board case number 2002G064.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Paul Farley, Deputy Executive Director, Department of Personnel and Administration (DPA), addressed the Board on behalf of the newly appointed State Personnel Director, Jeff Wells. With regard to the Civil Service Reform Commission, Mr. Farley stated that the report of the Commission had been issued and that the legislative process had begun. The legislative process is expected to unfold in two parts: the constitutional measure, sponsored by Rosemary Marshall and Norma Anderson, and the implementing statute. Mr. Farley expressed appreciation for the Board's role on the Commission and hope that the Board will support the legislative efforts. Ms. Lottner commended the Commission for its work in putting the report together and asked Mr. Farley to keep the Board informed throughout the legislative process. Mr. Farley then thanked Diedra Garcia and Stacy Worthington for their work on the Commission and spoke of plans for more outreach meetings around the state and identifying worksites for easy accessibility of employees to the meetings.

When questioned regarding the Board's proposals to amend the current whistleblower statute, Mr. Farley replied that the Commission did not feel that the investigative report by DPA added value to the process. Ms. Salkind stated that

the desire of the Board was to have employees utilize the internal grievance process first and still be able to file a timely whistleblower complaint. Ms. Worthington reported that she had send a draft of the Board's recommendations to Jeff Woodhouse after the October 2003 meeting, as well as a letter to Troy Eid and Jeff Wells asking support for the Board's whistleblower proposals. Mr. Farley asked that a copy of the Board's proposals be forwarded to him.

When the issue of support for the Commission's report was raised, the Board members declined to discuss specifics until proposed language for the legislation had been drafted. The possibility of public comment, a question and answer session or briefing with Mr. Farley, and the role of the Board in deliberating the merits of proposed legislation were discussed. It was decided that if language for the implementing legislation were available, the report would be included on the Board's December Agenda. If not, the topic would be moved to a later agenda.

Finally, Mr. Farley stated that he would send a copy of DPA's Annual Report to each Board member and that Mr. Wells would be taking a fresh look at the total compensation package promoted by Troy Eid, including salary survey, performance pay, benefits, and revenue projections.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Mandate in Sanchez v. Department of Corrections, State Personnel Board case number 2003G067, Court of Appeals No. 03CA1008

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

In addition to the above administrative matters, Ms. Worthington raised two issues for consideration. The first issue was the firearms policy currently in force at the Board, which requires that persons appearing before the Board refrain from taking firearms into the courtroom. This necessitates locking firearms in a drawer or cabinet, and raises the issue of whether the weapons are adequately secure. Mr. Forman stated that a new law had been passed which can prevent people from carrying concealed weapons into certain places but can the Board limit the ability of people to bring firearms into the courtroom? Ms. Siderius moved to request that Mr. Forman provide a memorandum on the Board's legal options regarding concealed and non-concealed weapons and the fiscal impact on the Board of installing a device such as a metal detector. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following

members: Ms. Garcia, Ms. Salkind, Ms. Siderius, and Ms. Lottner. Mr. Zakhem voted in opposition to the motion.

The second issue Ms. Worthington raised was her imminent departure from the Board in January 2004 to return to the Office of the Attorney General. Since her last day will be January 2, 2004, she discussed the possibility of her employment overlapping with that of a new director for training purposes, the filling of the director position through transfer, and the competitive process if a transfer is not possible. Ms. Worthington also discussed the fact that the director's position had been reclassified from an administrative law judge (ALJ) to management in 2001. Since position description questionnaires are being rewritten, the position may fall more appropriately into the ALJ series, an ALJ III or an ALJ IV. Qualifications for the position currently include experience in budgeting, supervision, and understanding of the personnel system. Ms. Worthington is to talk to Monica Cortez-Sangster regarding an announcement and where to announce, such as the CBA Newsletter, Employment Law Newsletter, Denver Career Service, etc. It was also determined that a luncheon honoring Ms. Worthington would be held immediately following the December Board meeting on December 16, 2003.

Following Executive Session, Ms. Siderius moved that Chair Joyce Lottner and Vice Chair John Zakhem be designated as the interview team. This motion was seconded by Ms. Garcia, and unanimously carried. The Board members agreed that staff should have input into the choosing of the new director.

X. EXECUTIVE SESSION

- A. Case Status Report
- B. Personnel Matters

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Having no more business, the meeting adjourned by consensus.

APPROVED THIS 16th DAY OF DECEMBER, 2003.

Joyce Lottner, Chair

John Zakhem, Vice Chair

Diedra Garcia, Member

Elizabeth Salkind, Member

Linda Siderius, Member